THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 18118 of 2006

Oral order:

Assailing the award dated 13.02.2006, passed by the Labour Court, Khammam, in I.D. No. 137 of 2003, the petitioner filed the present writ petition.

The petitioner while working with the respondents-APSRTC as Helper at Bhadrachalam and while on duty on DGT vehicle, he along with the Driver of the bus was issued charge sheet dated 07.08.2002, framing the following charges:

1. For having handed over less quantity of broken spring blades to the extent of 1880 Kgs. i.e. you were supposed to hand over 4,700 Kgs. whereas you were handed over only 2,820 Kgs. at zonal scrap and on 29.1.2001, which is misconduct under Reg. 28(x) of APSRTC Employees (Conduct) Regulations, 1963.
2. For having caused loss of scrap material i.e. broken spring blades weighing 1880 Kgs., in transit while proceeding from Bhadrachalam to Karimnagar, which is misconduct under Reg. 28(ix)(a) of APSRTC Employees (Conduct) Regulations, 1963.
3. For having misappropriated the broken spring blades to the tune of 1880 Kgs., which is misconduct under Reg. 28(x) of APSRTC Employees (Conduct) Regulations, 1963.
4. For having committed an act of moral turpitude which would tarnish the image of Corporation in the eyes of public which is misconduct under Reg. 28(xv) of APSRTC Employees (Conduct) Regulations, 1963.

The petitioner submitted his explanation denying the above charges. However, the respondents dis-satisfied with the explanation, conducted an enquiry into the charges. The Enquiry Officer, who conducted the enquiry, submitted his report, holding that the charges leveled against the petitioner are proved. Based on the enquiry report, the respondents vide order dated 22.02.2003, removed the petitioner from service. Aggrieved thereby, the petitioner filed appeal, but the

same, by order dated 12.05.2003, was rejected. Assailing the said orders, the petitioner raised an industrial dispute in I.D. No. 137 of 2003, which by reason of the impugned award, was dismissed.

The learned counsel for the petitioner submitted that the petitioner was only a Helper on the Bus, the Driver was entrusted to transport the scrap of broken springs, and he alone is responsible for the short delivery, if any, and as such, the petitioner cannot be made responsible for the short delivery, and on the ground of short delivery of scrap of broken springs the petitioner could not have removed from service. He further submitted that the alleged short delivery of scrap of broken springs was noticed after lapse of eight months and as at the time of delivery of scrap of broken springs, the seals were found to be in tact, and the seals have not been found to be tampered at the time of delivery of scrap of broken springs, the question of short delivery or any misappropriation, does not arise. Hence, he prayed that the impugned award be set aside and the writ petition be allowed.

On the other hand, the learned Standing Counsel for the respondents-APSRTC submitted that the petitioner who accompanied along with the Driver cannot contend that he is not responsible for the short delivery of scrap of broken springs. In fact, in the enquiry, it was found that the petitioner along with the Driver misappropriated 1880 Kgs. of scrap of broken springs, and considering the serious charge, which stood proved in the enquiry, the respondents, having lost confidence in the petitioner, removed him from service, which was confirmed in appeal as well as by the Labour Court, by the impugned award, and no interference is called for therewith. He submitted that it is not the quantum of money misappropriated, but loss of confidence in the employee which is prime, while awarding punishment, and in support of this submission, he placed reliance on the judgment of the

apex Court in **Depot Manager, APSRTC v. Raghuda Siva Sankar Prasad**[1]. He thus prayed that the writ petition be dismissed.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents-APSRTC and perused the award of the Labour Court impugned in the writ petition.

The certiorari jurisdiction of this Court under Article 226 of the Constitution of India, to interfere with the orders/awards of the subordinate Courts/Tribunals, is well defined, and is mainly exercised for correcting gross errors of jurisdiction. In **Surya Dev Rai v. Ram Chander Rai**[2], the apex Court defined the certiorari jurisdiction of this Court under Article 226 of the Constitution of India, as under:

> Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction, i.e., when a subordinate Court is found to have acted (i) without jurisdiction - by assuming jurisdiction where there exists none, or
> (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

Keeping in view the scope of certiorari jurisdiction of this Court, the award of the Labour Court, may be examined.

As can be seen from the impugned award, the petitioner did not dispute the validity of the departmental enquiry, which held that the charges leveled against the petitioner, are proved. Neither the petitioner nor the respondents adduced any oral evidence before the Labour Court. In the departmental enquiry, it was found that when net weight of the scrap of broken springs was weighed, it was 4700 Kgs., and accordingly DS8 copy was prepared, but when it was delivered, it weighed 1880 Kgs., and accordingly DS8 copy was prepared. Though the second DS8 copy reflected short delivery of material, neither the Driver of the Bus nor the petitioner questioned about the same, and in fact, in the evidence it was found that DS8 copy was

retrieved beneath the batter box of DGT bus. This apart, neither the Driver of the bus nor the petitioner, cross-examined the persons who prepared the DS8 copies. Thus based on the documentary evidence, coupled with the oral evidence let in by the parties in the domestic enquiry, the Labour Court came to the conclusion that the Driver and the petitioner delivered short quantity of scrap of broken spring blades.

Though the petitioner contends that he being a Helper is not responsible for the short delivery of scrap of spring blades, the Labour Court found that though the material was physically entrusted to the Driver, but it was entrusted to both the Driver and the petitioner, and in fact, they kept the vehicle at Narsampet during night and took the vehicle on the next day to Karimnagar. It further held that without the knowledge of the petitioner, the Driver cannot do anything, and apart from that, it was the duty of the petitioner to bring to the notice of the Department if the Driver removed any material, but the petitioner did not lodge any complaint against the Driver, and as such, found that both the Driver and the petitioner caused loss to the Department my delivering less quantity of material. The Labour Court, accordingly, upheld the findings of the Enquiry Officer that that charge Nos. 1 and 2 are proved against the petitioner.

Even though there is no direct evidence of misappropriation of property, but having regard to the fact that by short delivery of scrap of spring blades by the petitioner and the Driver, the respondents suffered loss of revenue, and that such loss was the result of the negligence of the Driver and the petitioner, the Labour Court felt that it is not fair to force the respondents to take into service such careless and irresponsible employees into service, and feeling so, it held that the punishment of removal imposed on the petitioner, is not shockingly disproportionate to the proved charges, and I see no reason

whatsoever to interfere therewith, more so having regard to the judgment of the apex Court in **KSRTC v. A.T. Mane**[3], wherein it was held that once a domestic tribunal based on evidence comes to a particular conclusion, normally it is not open to the appellate tribunal or courts to substitute their subjective opinion in the place of the one arrived at by the domestic tribunal.

In the above view of the matter, I find no merit in the writ petition, and the same is accordingly dismissed. No costs.

N.V. RAMANA, J.

Dated: 5th October, 2007.
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[1] 2006 (TLS) 43006
[2] AIR 2003 SC 3044 =2003 AIR SCW 3872
[3] 2005 SSC (L & S) 407